

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOEY A. GARCIA,

Plaintiff

v.

JEREMY TAFELMEYER and LEVI BELL,

Defendants

Case No.: 3:25-cv-00038-MMD-CSD

Order

Re: ECF Nos. 1, 1-1

Plaintiff, who is an inmate in custody of the Nevada Department of Corrections, has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and pro se complaint (ECF No. 1-1).

I. IFP APPLICATION

A person may be granted permission to proceed IFP if the person “submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1).

The Local Rules of Practice for the District of Nevada provide: “Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant’s income, assets, expenses, and liabilities.” LSR 1-1.

“[T]he supporting affidavits [must] state the facts as to [the] affiant’s poverty with some particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)

1 (quotation marks and citation omitted). A litigant need not “be absolutely destitute to enjoy the
2 benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

3 An inmate submitting an application to proceed IFP must also “submit a certificate from
4 the institution certifying the amount of funds currently held in the applicant’s trust account at the
5 institution and the net deposits in the applicant’s account for the six months prior to the date of
6 submission of the application.” LSR 1-2; *see also* 28 U.S.C. § 1915(a)(2). If the inmate has been
7 at the institution for less than six months, “the certificate must show the account’s activity for
8 this shortened period.” LSR 1-2.

9 If a prisoner brings a civil action IFP, the prisoner is still required to pay the full amount
10 of the filing fee. 28 U.S.C. § 1915(b)(1). The court will assess and collect (when funds exist) an
11 initial partial filing fee that is calculated as 20 percent of the greater of the average monthly
12 deposits or the average monthly balance for the six-month period immediately preceding the
13 filing of the complaint. 28 U.S.C. § 1915(b)(1)(A)-(B). After the initial partial filing fee is paid,
14 the prisoner is required to make monthly payments equal to 20 percent of the preceding month’s
15 income credited to the prisoner’s account. 28 U.S.C. § 1915(b)(2). The agency that has custody
16 of the prisoner will forward payments from the prisoner’s account to the court clerk each time
17 the account exceeds \$10 until the filing fees are paid. 28 U.S.C. § 1915(b)(2).

18 Plaintiff’s application indicates he has less than \$40.00 in his bank account, has not been
19 employed since 2020, and is currently incarcerated. (ECF No. 1.)

20 Plaintiff’s application to proceed IFP is granted. Plaintiff is required to pay an initial
21 partial filing fee in the amount of \$61.08 (20 percent of \$305.40). Thereafter, whenever his
22 prison account exceeds \$10, he must make monthly payments in the amount of 20 percent of the
23 preceding month’s income credited to his account until the \$350 filing fee is paid.

II. SCREENING

A. Standard

Under the statute governing IFP proceedings, “the court shall dismiss the case at any time if the court determines that-- (A) the allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

In addition, under 28 U.S.C. § 1915A, “[t]he court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). In conducting this review, the court “shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint-- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b)(1)-(2).

Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii) and 28 U.S.C. § 1915A(b)(1) track that language. As such, when reviewing the adequacy of a complaint under these statutes, the court applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

The court must accept as true the allegations, construe the pleadings in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*,

1 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are “held to less
2 stringent standards than formal pleadings drafted by lawyers[.]” *Hughes v. Rowe*, 449 U.S. 5, 9
3 (1980) (internal quotation marks and citation omitted).

4 A complaint must contain more than a “formulaic recitation of the elements of a cause of
5 action,” it must contain factual allegations sufficient to “raise a right to relief above the
6 speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading
7 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]
8 a legally cognizable right of action.” *Id.* (citation and quotation marks omitted). At a minimum, a
9 plaintiff should include “enough facts to state a claim to relief that is plausible on its face.” *Id.* at
10 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

11 A dismissal should not be without leave to amend unless it is clear from the face of the
12 complaint that the action is frivolous and could not be amended to state a federal claim, or the
13 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d
14 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

15 **B. Plaintiff’s Complaint**

16 Plaintiff’s complaint names as defendants Jeremy Tafelmeyer and Levi Bell. (ECF No. 1-
17 1 at 1.) Plaintiff identifies both defendants as Deputies with the Lyon County Sherriff’s Office.
18 (*Id.* at 2.) Plaintiff asserts three claims, a claim for excessive force against each defendant
19 individually and a claim for cruel and unusual punishment against both defendants. (*Id.* at 3-5.)
20 Plaintiff seeks punitive and compensatory damages. (*Id.* at 6.)

21 Plaintiff alleges that on July 27, 2024, he was riding his bike on the side of Highway 50
22 in Dayton, Nevada. (*Id.*) Defendants drove towards him with floodlights that blinded and
23 disoriented him. (*Id.*) He got off his bike and stood still. (*Id.*) Then, Bell “ran full speed and

1 attacked” Plaintiff, slamming him into jagged rocks and glass. Plaintiff was then handcuffed
2 while Tafelmeyer kneeled on his face, strangling his neck and pushing his face into the ground.
3 (*Id.*) Bell then rolled Plaintiff over to search him but Bell punched Plaintiff “very hard” in the
4 sternum. (*Id.*) Bell punched Plaintiff again once he was placed in the back of the patrol car
5 wearing restraints.

6 Although Plaintiff’s complaint mentions the Eighth Amendment as the basis for his third
7 claim, as Plaintiff alleges that defendants used excessive force against him during his arrest,
8 these claims are governed by the Fourth Amendment. *See Graham v. Connor*, 490 U.S. 386, 395
9 (1989) (claims of excessive force during an arrest or other seizure of a free citizen are evaluated
10 under the Fourth Amendment and apply an “objective reasonableness” standard).

11 Plaintiff may proceed with the Fourth Amendment excessive force claims against both
12 defendants.

13 III. CONCLUSION

14 (1) Plaintiff’s IFP application (ECF No. 1) is **GRANTED**. Plaintiff need not pay an
15 initial partial filing fee; however, whenever his prison account exceeds \$10, he is required to
16 make monthly payments in the amount of 20 percent of the preceding month’s income credited
17 to his account until the full \$350 filing fee is paid. This is required even if the action is
18 dismissed, or is otherwise unsuccessful. The Clerk must **SEND** a copy of this Order to the
19 attention of **Chief of Inmate Services for the Nevada Department of Corrections**, P.O. Box
20 7011, Carson City, Nevada 89702.

21 (2) The Clerk will **FILE** the complaint (ECF No. 1-1).

22 (3) The complaint will **PROCEED** with a Fourth Amendment excessive force claim
23 against defendants Tafelmeyer and Bell.

1 (4) Plaintiff may seek leave to amend to assert a Fourth Amendment failure to intervene
2 claim under the Fourth Amendment against the Doe defendants once those defendants have been
3 identified. Leave to amend shall be sought within the parameters of any applicable scheduling
4 order deadlines.

5 (5) Washoe County and RPD are **DISMISSED WITH LEAVE TO AMEND**.

6 The Complaint is **DISMISSED WITH LEAVE TO AMEND**. Plaintiff has **30 DAYS**
7 from the date of this Order to file an amended complaint correcting the deficiencies with respect
8 to Washoe County and RPD noted above. Alternatively, he may file a notice to the court within
9 **30 DAYS** that indicates he only wishes to proceed against Detective Marconato (though he may
10 still seek leave to amend later, in accordance with any scheduling order deadlines, to pursue a
11 claim against the Doe defendants he has identified or against the City of Reno, City of Sparks or
12 Washoe County). Any amended complaint must be complete in and of itself without referring or
13 incorporating by reference any previous complaint. Any allegations, parties, or requests for relief
14 from a prior complaint that are not carried forwarded in the amended complaint will no longer be
15 before the court. Plaintiff shall check the box for the first amended complaint on the court's form
16 civil rights complaint. If Plaintiff fails to file an amended complaint within the 30 days, the
17 action will proceed with the Fourth Amendment claim against detective Marconato.

18 (6) The Clerk of Court shall **ISSUE** a summons for defendant Tony Marconato, and
19 **deliver the same**, to the U.S. Marshal for service. The Clerk also shall also **SEND** sufficient
20 copies of the complaint and this Order to the U.S. Marshal for service on defendant Marconato.
21 The Clerk shall **SEND** to Plaintiff a USM-285 form. Plaintiff will have **21 days** within which to
22 furnish to the U.S. Marshal the required USM-285 forms with relevant information for the
23 defendant on each form at 400 S. Virginia Street, 2nd floor, Reno, Nevada 89501. Within **20**

1 **days** after receiving from the U.S. Marshal a copy of the USM-285 forms showing whether
2 service has been accomplished, if any of the defendants were not served, and if Plaintiff wants
3 service to be attempted again, he must file a motion with the court providing a more detailed
4 name and/or address for service, or indicating that some other method of service should be
5 attempted.

6 (7) Under Federal Rule of Civil Procedure 4(m), service on defendant Marconato must be
7 completed within **90 days** of the date of this Order. If Plaintiff requires additional time to meet
8 any of the deadlines set by the court, he must file a motion for extension of time under Local
9 Rule 1A 6-1 *before* the expiration of the deadline, and the motion must be supported by a
10 showing of good cause. A motion filed after a deadline set by the court or applicable rules will
11 be denied absent a showing of excusable neglect.

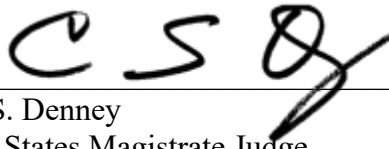
12 (8) Plaintiff shall serve upon any defendant or, if an appearance has been entered by
13 counsel, upon the attorney(s), a copy of every pleading, motion or other document submitted for
14 consideration by the court. If Plaintiff electronically files a document with the court's electronic
15 filing system, no certificate of service is required. Fed. R. Civ. P. 5(d)(1)(B); LR IC 4-1(b); LR
16 5-1. If Plaintiff mails the document to the court, Plaintiff shall include with the original
17 document submitted for filing a certificate stating the date that a true and correct copy of the
18 document was mailed to the defendants or counsel for the defendants.

19 If counsel has entered a notice of appearance, Plaintiff shall direct service to the
20 individual attorney named in the notice of appearance, at the physical or electronic address stated
21 therein. The court may disregard any document received by a district judge or magistrate judge
22 which has not been filed with the Clerk, and any document received by a district judge,
23

1 magistrate judge, or the Clerk which fails to include a certificate showing proper service when
2 required.

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4 **IT IS SO ORDERED.**

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6 Dated: June 20, 2025

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9 Craig S. Denney
10 United States Magistrate Judge
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